

Cambridge Waste Water Treatment Plant Relocation Project
Anglian Water Services Limited

Draft Section 106 Obligation (Parking)

Application Document Reference: 7.9
PINS Project Reference: WW010003
APFP Regulation No. 5(2)(q)

Revision No. 1
29 September 2023

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Dated: 2023

- (1) ANGLIAN WATER SERVICES LIMITED
- (2) CAMBRIDGESHIRE COUNTY COUNCIL

Agreement

under section 106 Town and Country Planning Act 1990 relating to the Cambridge
Waste Water Treatment Plant Relocation

BETWEEN:

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall Castle Street, Cambridge CB3 0AP ("**the County Council**"); and
- (2) **ANGLIAN WATER SERVICES LIMITED** (company registration number 02366656) of Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU ("**Anglian Water**").

(together "**the Parties**")

BACKGROUND

- (A) The County Council is the local highway authority for the purposes of the 1980 Act and a local planning authority for the area within which the Site is located and is a person who is entitled to enforce the obligations contained in this Agreement.
- (B) Anglian Water is the freehold owner of those parts of the Site free from encumbrances that would prevent Anglian Water entering into this Agreement.
- (C) Pursuant to the Application, Anglian Water has applied to Secretary of State for the Department for Food, the Environment and Rural Affairs for a Development Consent Order for the Development pursuant to the 2008 Act.
- (D) It is intended that Anglian Water will be the undertaker for the purposes of the Development Consent Order.
- (E) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement are
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development

and may be enforced by the County Council against Anglian Water and their successors as set out herein.

OPERATIVE PROVISIONS

1. **INTERPRETATION**

1.1 In this Agreement, the following words and expressions have the following meanings:

"1980 Act"	the Highways Act 1980
"1990 Act"	the Town and Country Planning Act 1990
"2008 Act"	the Planning Act 2008
"Application"	the application for a development consent order under the 2008 Act submitted to the Planning Inspectorate on 28 April 2023 and accepted for examination on 24 May 2023 with reference WW010003

"Commencement Date"	the date specified in clause 3.1 and " Commence " and " Commencement " shall be construed accordingly
"Development"	the authorised development as defined in and authorised by the Development Consent Order
"Development Consent Order"	the development consent order to be made pursuant to the Application
"Index Linked"	<p>means increased in accordance with the following formula:</p> $\frac{A \times B}{C} = D$ <p>Where:</p> <ul style="list-style-type: none"> • A = the sum specified in this deed in pounds sterling; • B = the figures shown in the All Items Retail Prices Index for the period immediately prior to the date up to which the sum concerned is to be indexed under the provisions of this deed; • C = the figure shown in the All Items Retail Prices Index for the period immediately prior to the date of this deed; • D = the recalculated sum in pounds sterling applying under this deed; and • B/C shall be equal to or greater than 1 <p>PROVIDED THAT if the All Items Retail Price Index becomes no longer maintained by the Office of National Statistics the said formula shall be applied mutatis mutandis (so far as it concerns periods after it ceases to be maintained) by reference to such other publication or index as may be agreed from time to time with the County Council</p>
"Interest"	interest at 4% per annum above the base lending rate of Lloyds Bank plc from time to time
"Plan 1"	the plan attached to this Agreement marked Plan 1
"Plan 2"	the plan attached to this Agreement marked Plan 2
"Plan 3"	the plan attached to this Agreement marked Plan 3
"Site"	the existing waste water treatment works at Milton, shown for identification edged red on Plan 1
"Specialist"	has the meaning given to it in clause 10.2
"Working Day"	any day that is not a Saturday, a Sunday, a bank holiday or a public holiday in England

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement include the successors in title of that party and any references to the County Council include any successor authority exercising the same functions;
- 1.2.6 any reference to Anglian Water includes any entity which takes a transfer of the benefit of the power to construct, use, operate and maintain the Development pursuant to the Development Consent Order;
- 1.2.7 "including" means "including, without limitation";
- 1.2.8 any covenant by Anglian Water not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.9 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.10 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of that section 106 the obligations contained in this Agreement are planning obligations and are enforceable by the County Council.
- 2.2 The covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by Anglian Water with the intention that they bind the interests held by those persons in the Site and their successors and assigns.
- 2.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.4 Nothing contained or implied in this Agreement restricts or is intended to restrict the proper exercise at any time by the County Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.5 This Agreement will be registered as a local land charge by the County Council.
- 2.6 The obligations in this Agreement will not be enforceable against a statutory undertaker (save for Anglian Water in its capacity as the undertaker of the Development Consent Order) after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by Anglian Water to that statutory undertaker unless the transfer is made to transfer the benefit of the power to construct, operate, use and maintain the Development pursuant to the Development Consent Order.
- 2.7 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, development consent order or any other statutory authority other than one relating to the Development as specified in the Application, granted after the date of this Agreement.

3. **COMMENCEMENT DATE**

- 3.1 The obligations contained in **clauses 4.1 and 4.2** and the Schedules referred to in those clauses do not come into effect until the date on which the Development commences by the carrying out on the Site pursuant to the Development Consent Order of a material operation as specified in section 155 of the 2008 Act (subject to the provisions of **clause 3.2**)
- 3.2 The Commencement Date will not be triggered by any of the following operations:
- 3.2.1 construction of a temporary construction access from Low Fen Drove Way and perimeter fencing;
 - 3.2.2 establishment of construction compounds and offices;
 - 3.2.3 construction of the permanent access road and its junction with Horningsea Road;
 - 3.2.4 land drainage works;
 - 3.2.5 provision of services;
 - 3.2.6 visual mitigation planting;
 - 3.2.7 archaeological investigations;
 - 3.2.8 mitigation works required by the construction environmental management plan pursuant to requirement 9(2)(a);
 - 3.2.9 within the boundary of the existing Cambridge Waste Water Treatment plant forming part of Work Nos. 18, 25 and 28, the establishment of construction compounds, the provision of site welfare facilities, the provision of services and the commencement of shaft construction; and
 - 3.2.10 within the boundary of Work Nos. 33 and 34, the installation of up to 50 metres of the Waterbeach pipeline under and extending from both sides of the Cambridge to King's Lynn railway line and construction compound.

4. **OBLIGATIONS OF THE PARTIES**

- 4.1 Anglian Water agree with the County Council to comply with its obligations set out in **Schedule 1** in relation to the Development.
- 4.2 The County Council agrees with Anglian Water to comply with its obligations set out in **Schedule 1**.
- 4.3 The County Council agrees with Anglian Water to act reasonably in exercising its discretion and discharging its functions under this Agreement and where any notice, consent,

approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.

4.4 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date PROVIDED THAT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.4**.

4.5 Where any approval is required from a party to this Agreement, that approval shall not be unreasonably withheld or delayed and if a party has received an application for approval accompanied by all relevant information and fails to notify the other party of its decision before the end of the period of 42 days beginning with the date on which the written request for approval is submitted with all relevant information, consent is deemed to be granted.

5. **TERMINATION OF THIS AGREEMENT**

5.1 This Agreement will come to an end if:

5.1.1 subject to **clause 5.2**, the Development Consent Order is quashed, revoked or otherwise withdrawn other than at the request of either of Anglian Water at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable;

5.1.2 the Development Consent Order expires before the Commencement Date without having been implemented.

5.2 Where the Agreement comes to an end under **clause 5.1**:

5.2.1 the County Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site; and

5.2.2 any monies paid under this Agreement to the County Council, with the exception of fees paid under **clause 7**, are to be returned to the party that made the payment within one month of the Agreement coming to an end together with interest accrued on the monies from and including the date of payment to and including the date of repayment.

5.3 Where the Agreement is released in part by a future agreement, the County Council will place a note against the entry made in the Local Land Charges register stating which obligations no longer have effect.

5.4 If either of Anglian Water makes a request in writing at any time after each or all of the obligations under this Agreement have been discharged and complied with (and subject to the payment of the County Council's reasonable and proper costs), the County Council will issue a written confirmation of such performance or discharge.

5.5 Following the performance and full satisfaction of all the terms of this Agreement or if this Agreement is determined pursuant to **clause 5.1** (and subject to payment of the County Council's reasonable and proper costs and charges) the County Council will on the written request of either of Anglian Water cancel all entries made in the local land charges register in respect of this Agreement.

6. **NOTICES**

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery unless otherwise agreed in writing between the parties.

- 6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.3.1 if delivered by hand, at the time of delivery;
 - 6.3.2 if sent by post, on the second Working Day after posting; or
 - 6.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.4 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

7. COSTS OF THIS AGREEMENT

Upon completion of this Agreement Anglian Water shall pay to the County Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement

8. INTEREST

- 8.1 If any payment due under this Agreement is paid late, Interest will be payable on the sum outstanding from the date payment is due to the date of payment

9. VALUE ADDED TAX

- 9.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

10. DETERMINATION OF DISPUTES

- 10.1 Subject to **clause 10.7**, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 10** The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 10.2 For the purposes of this **clause 10** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 10.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 10.4**.
- 10.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or

the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

10.5 The Specialist is to act as an independent expert and shall be responsible for agreeing the process by which the dispute is to be determined with the Parties within ten Working Days of their appointment.

10.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 10**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist (or if the Specialist makes no direction, then the costs shall be borne equally between the parties to the dispute).

10.7 This **clause 10** does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

11. **ANGLIAN WATER**

11.1 Until the covenants, restrictions and obligations in **Schedule 1** have been complied with, Anglian Water will give to the County Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Site:

11.1.1 the name and address of the person to whom the disposition was made; and

11.1.2 the nature and extent of the interest disposed of.

12. **WAIVER**

12.1 No failure or delay by the County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. **DATA PROTECTION**

13.1 The parties to this Agreement acknowledge and agree that information as to compliance with obligations pursuant to this Agreement (including as to whether or not contributions have been paid) may be passed to:

13.1.1 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that recipients of such information may then disseminate it further; and

13.1.2 any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000.

14. **JURISDICTION**

14.1 This Agreement is to be governed by and interpreted in accordance with the law of England

14.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement

15. **EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

SCHEDULE 1

Parking Monitoring

Defined terms

1. In this Schedule, the following words and expressions have the following meanings

"First Operation of the New WWTW"	means the date on which the New WWTW is fully constructed and the commissioning period has lapsed and is first operational for the purposes of treating waste water as permitted by the Development Consent Order and "First Operate" shall be construed accordingly
"New WWTW"	means the land on which the new waste water treatment works will be developed pursuant to Work Nos. 6, 7 and 8 and as shown on Plan 3 ¹
"Parking Monitoring"	the monitoring of demand for parking and use of the Parking Monitoring Area by way of survey at times and dates to be agreed in writing in advance with the County Council
"Parking Monitoring Area"	the area in which the demand for parking directly associated with the Development is to be monitored as shown shaded blue on the plan appended hereto as Plan 2
"Parking Monitoring Contribution"	the sum of £[] (Index Linked) towards the auditing and review of the Parking Reports and review of the parking restrictions in the Parking Monitoring Area
"Parking Management Scheme"	the scheme for carrying out the Parking Monitoring, the submission of the Parking Reports, and the management of parking within the Parking Monitoring Area and to provide a mechanism for management of on-street parking if necessary which may include the promotion of a Traffic Regulation Order
"Parking Reports"	the reports to be prepared and submitted by the Anglian Water to record the results of the Parking Monitoring in accordance with paragraph 2.4 of this Schedule 1
"Traffic Regulation Order"	an order made for the purposes of regulating traffic pursuant to the Road Traffic Regulation Act 1984
"TRO Costs"	a sum up to £[] representing the reasonably and properly incurred costs of the County Council of the preparation, promotion, advertising and implementation (if approved) of a Traffic Regulation Order

¹ Plan to be provided

2. Anglian Water covenants with the County Council as follows:

Commencement of Development

2.1 Not to Commence the Development until it has entered into a deed of covenant with the County Council which binds the New WWTW to the obligations in this Agreement;

Parking Management

2.2 on or prior to the First Operation of the New WWTW to submit and secure the written approval of the County Council for the Parking Management Scheme which as a minimum shall include:

2.2.1 the form of the Parking Reports;

2.2.2 arrangements for surveys as part of the Parking Monitoring to be carried out which shall require surveys:

2.2.2.1 once prior to First Operation of the New WWTW to establish the baseline for the annual surveys;

2.2.2.2 annually from First Operation of the New WWTW for a period of three years.

2.3 not to First Operate the New WWTW until the Parking Management Scheme has been submitted to, and the written approval obtained from, the County Council;

2.4 no later than 42 days after each occasion on which the Parking Monitoring has been carried out to submit the Parking Report to the County Council;

2.5 on submission of the first Parking Report to the County Council and in any event prior to First Operation of the New WWTW to make payment to the County Council of the Parking Monitoring Contribution;

2.6 not to First Operate the New WWTW unless and until the Parking Monitoring Contribution has been paid to the County Council;

2.7 within 42 days of receipt of a written request from the County Council to make payment to the County Council of the TRO Costs PROVIDED THAT notification by the County Council pursuant to **paragraph 3.2** is given within three (3) years from First Operation of the New WWTW.

County Council Obligations

3. The County Council covenants with the Anglian Water as follows:

3.1 to apply the Parking Monitoring Contribution towards audit and review of the Parking Reports submitted by Anglian Water and the assessment as to whether parking restrictions are required to be implemented to mitigate the impact of parking generated as a consequence of the Development;

3.2 no later than three (3) years from First Operation of the New WWTW to notify Anglian Water as to whether it reasonably considers, based upon a review of the Parking Reports, that parking restrictions are necessary to control on-street parking in the vicinity of the Parking Monitoring Area and that it intends to promote and implement a Traffic Regulation Order;

3.3 to request payment of the TRO Costs upon the implementation of the Traffic Regulation Order, such payment request to be made in writing and evidenced with invoices or such other information as Anglian Water reasonably requires;

- 3.4 upon the written request of the Anglian Water to provide a reasonable breakdown of the use of and deployment of the contributions (or part thereof) paid by the Anglian Water pursuant to **Schedule 1** of this Agreement and in the event that any monies have not have been expended, or contractually committed to be spent, by the tenth (10th) anniversary of the date of First Operation then the County Council shall repay to the person who paid it the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Approval of the Parking Management Scheme

4. Anglian Water and the County Council agree that the following procedure applies to the approval of the Parking Management Scheme:
- 4.1 the County Council must respond to the submission of the Parking Management Scheme within ten (10) Working Days of submission from Anglian Water and if the County Council does not make any written comments to the terms of the Parking Management Scheme within ten (10) Working Days after being provided with the ASB Scheme, it will be taken to have approved its terms;
- 4.2 if the County Council does not approve and is not deemed to have approved the terms of the Parking Management Scheme pursuant to **paragraph 4.1**, Anglian Water must submit a revised ASB Scheme to the County Council for approval. The procedure set out in **paragraph 4.1** and this **paragraph 4.2** will apply to any revised Parking Management Scheme.
- 4.3 Anglian Water must continue to submit revised Parking Management Schemes to the County Council for approval until the terms of a draft Parking Management Scheme are approved by the County Council in accordance with **paragraph 4.**

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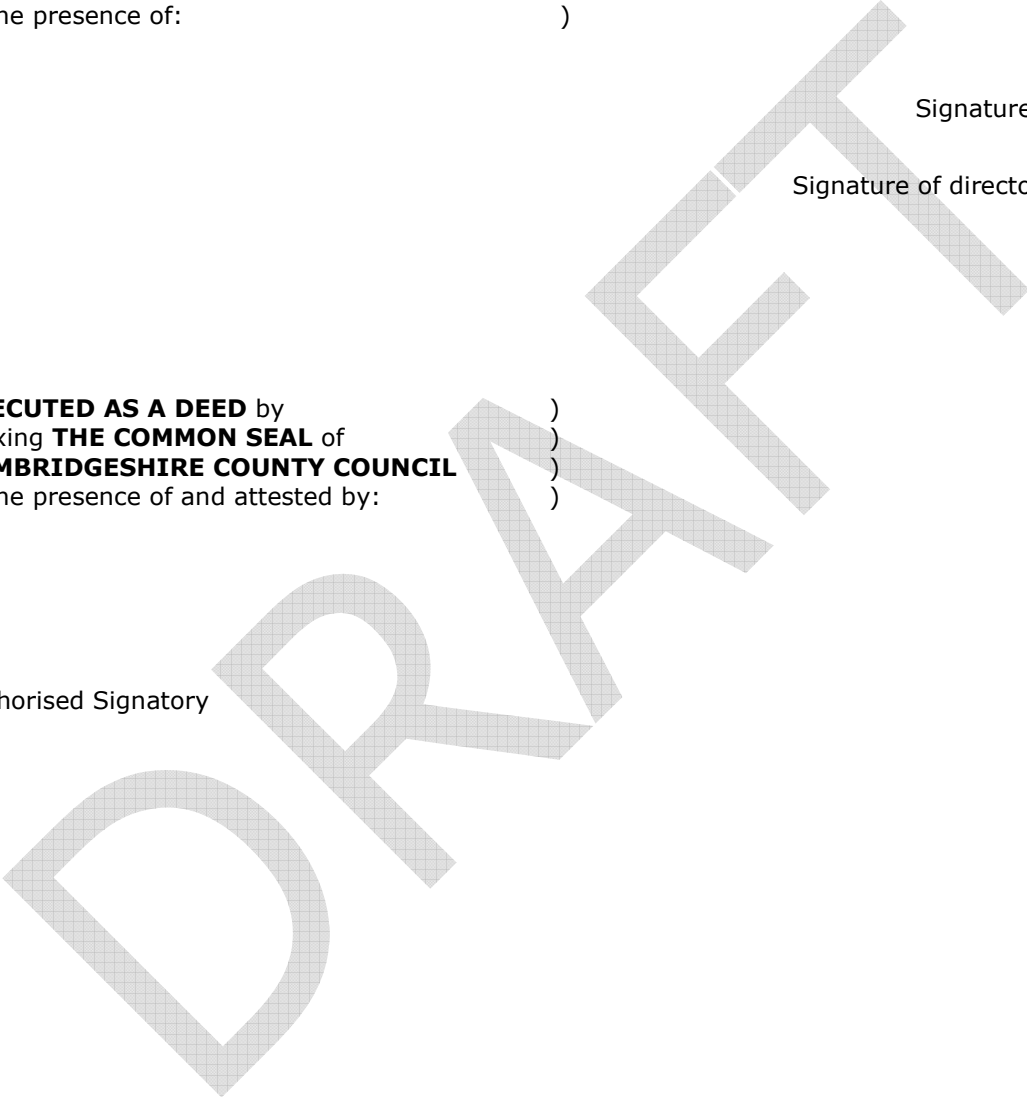
Executed as a deed by affixing)
the common seal of)
ANGLIAN WATER SERVICES LIMITED)
in the presence of:)

Signature of director

Signature of director/secretary

EXECUTED AS A DEED by)
affixing **THE COMMON SEAL** of)
CAMBRIDGESHIRE COUNTY COUNCIL)
in the presence of and attested by:)

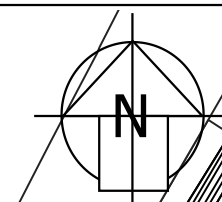
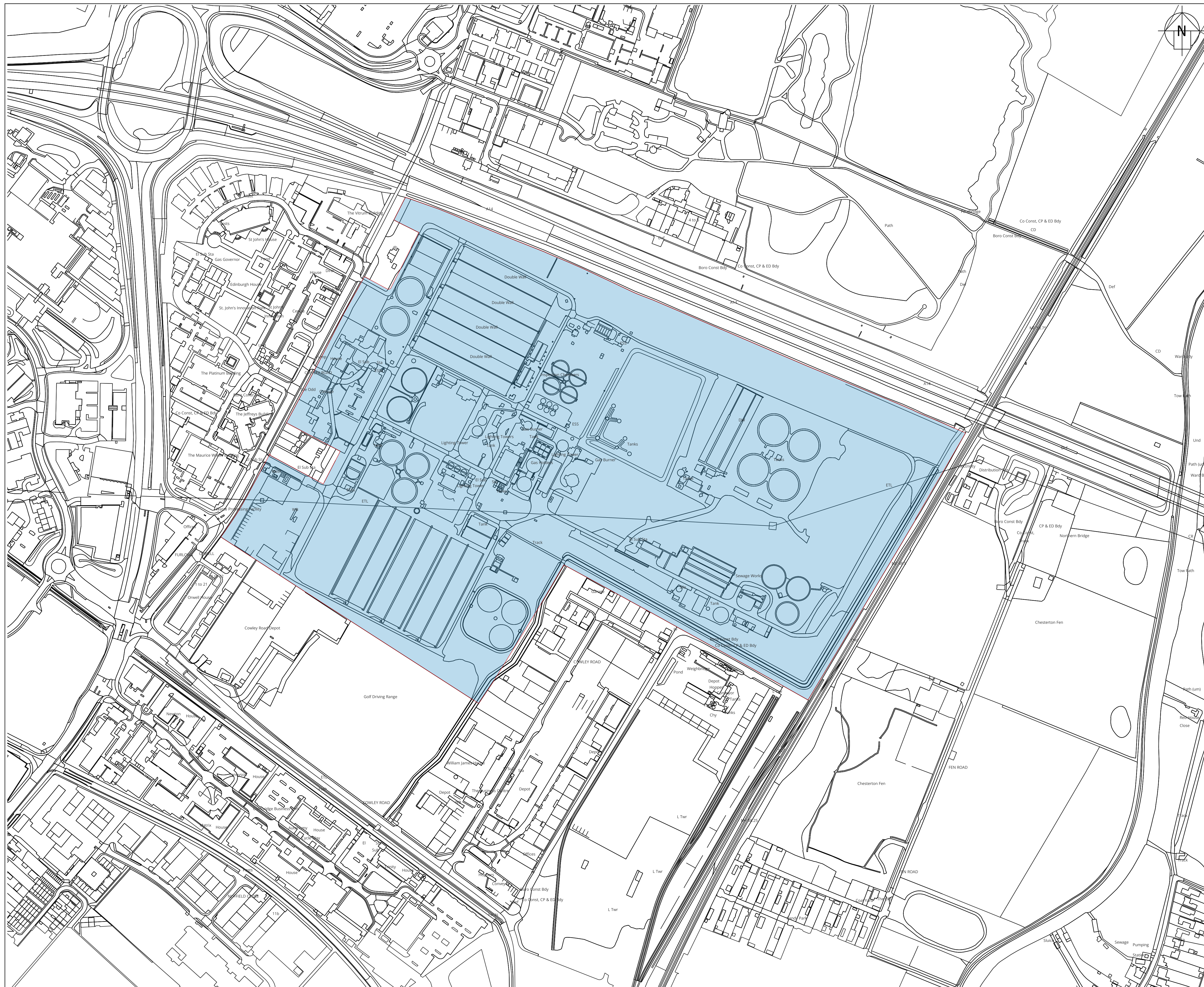
Authorised Signatory



APPENDIX 1

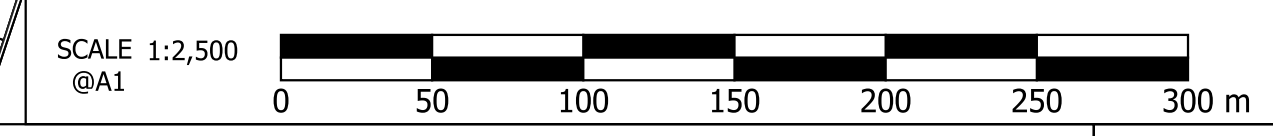
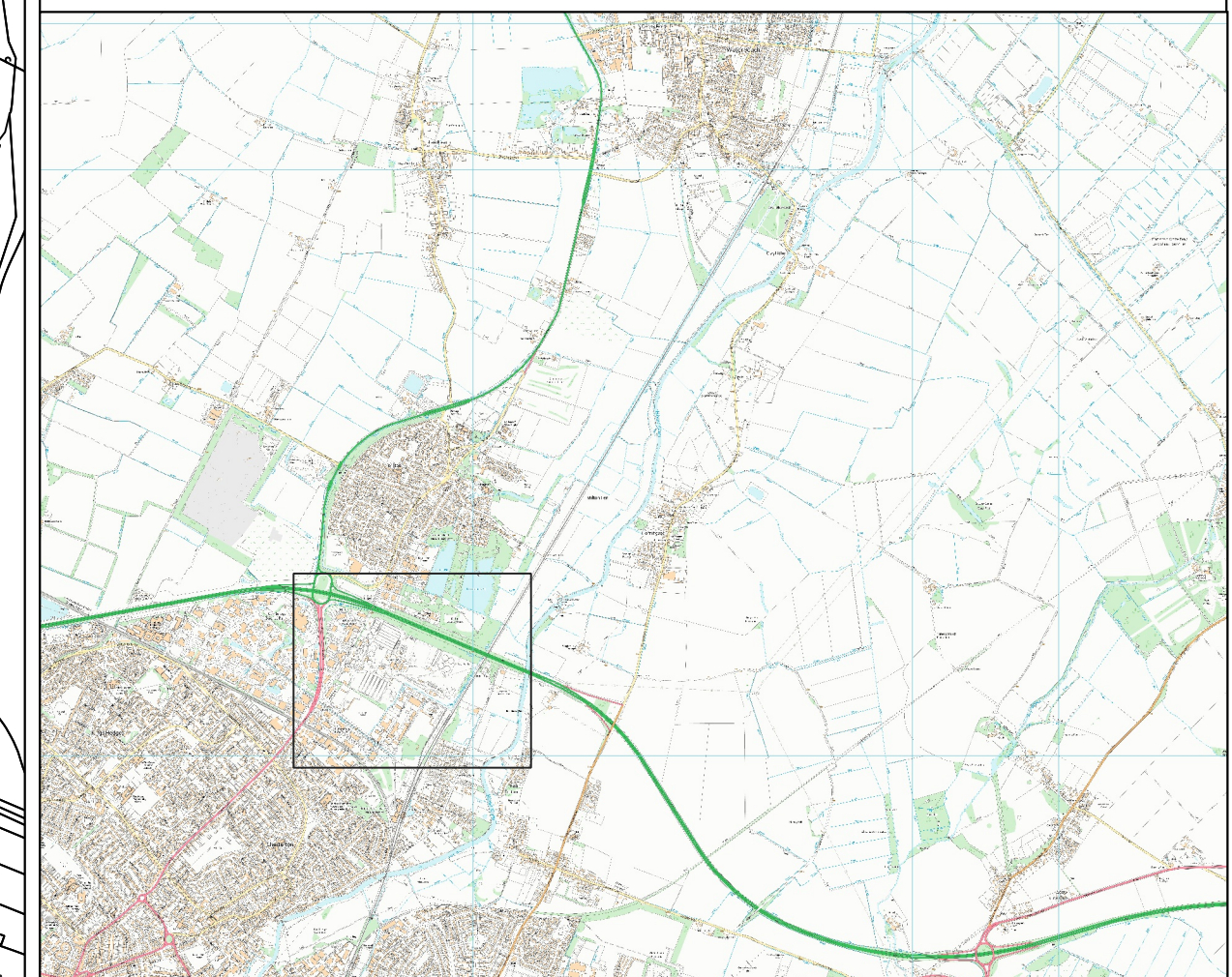
Plan 1 – Site

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LEGEND

TITLE BOUNDARY



DES'D: MR	DATE: 29.09.23	SCALE: 1:2,500				
DRAWN: MR	DATE: 29.09.23					
CHK'D:	DATE:					
APP'D:	DATE:					
REV	DATE	DETAILS	STAT	BY	CHK	APP
A	29.09.23	FIRST ISSUE				

PROJECT TITLE:
**CAMBRIDGE WASTE WATER
 TREATMENT PLANT
 RELOCATION PROJECT**

DRAWING TITLE:
The Site



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DRAWING No:

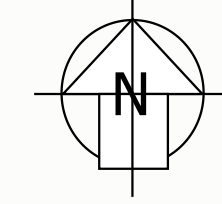
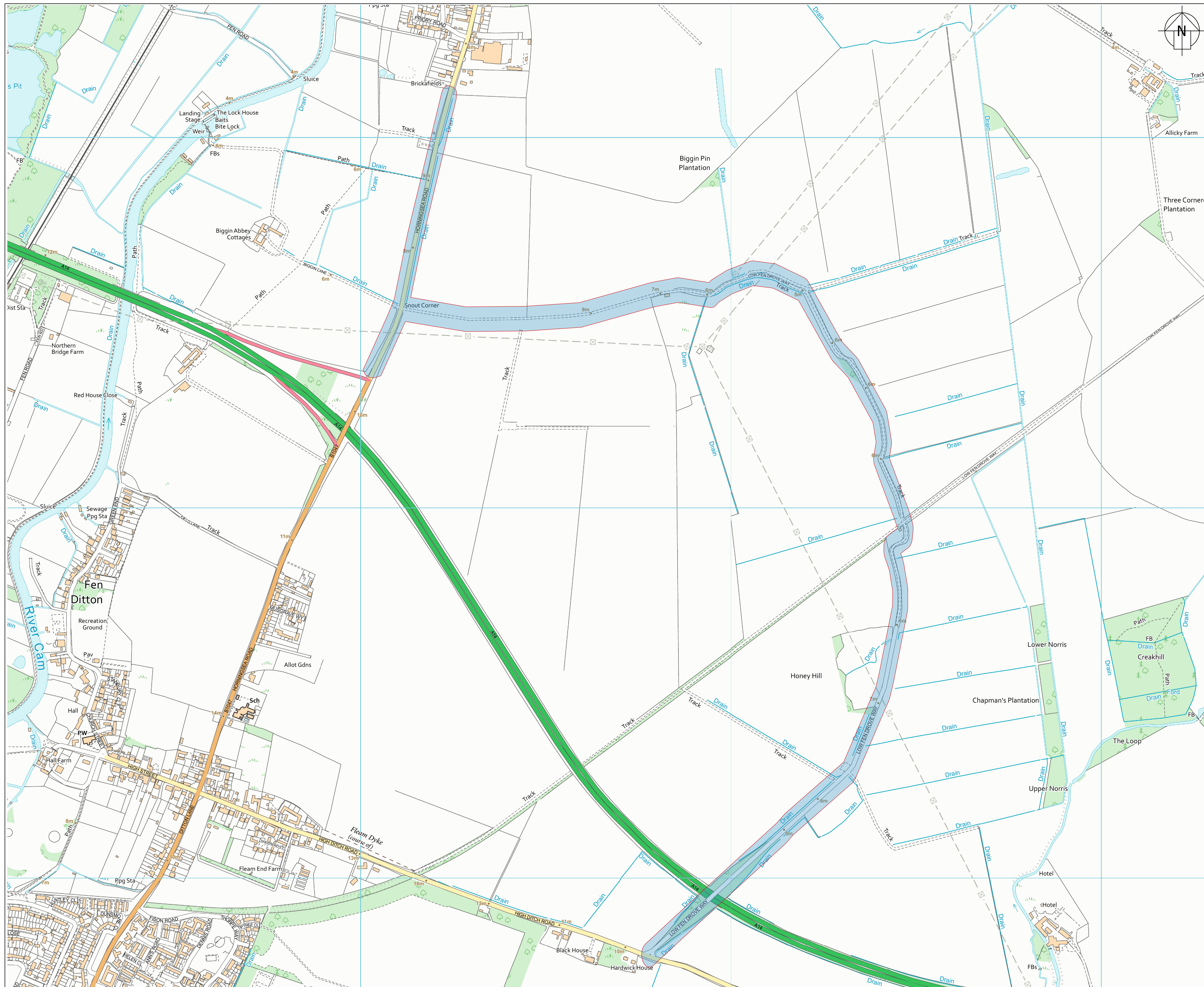
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APPENDIX 2

Plan 2 – Parking Monitoring Area

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LEGEND

PARKING MONITORING AREA

LOCATION PLAN - SCALE 1:50,000

SCALE 1:5,000
@A1

0 100 200 300 400 500 m

DES'D: MR	DATE: 29.09.23	SCALE: 1:5,000				
DRAWN: MR	DATE: 29.09.23					
CHK'D:	DATE:					
APP'D:	DATE:					
REV	DATE	DETAILS	STAT	BY	CHK	APP
A	29.09.23	FIRST ISSUE				

DES'D: MR
DATE: 29.09.23
SCALE: 1:5,000

PROJECT TITLE:
**CAMBRIDGE WASTE WATER
TREATMENT PLANT
RELOCATION PROJECT**

DRAWING TITLE:
Parking Monitoring Area Plan - Draft for Discussion/Agreement



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APPENDIX 3

Plan 3

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